

1 Steve W. Berman (*pro hac vice*)  
2 *steve@hbsslaw.com*  
3 HAGENS BERMAN SOBOL SHAPIRO LLP  
4 1301 Second Avenue, Suite 2000  
5 Seattle, WA 98101  
6 Telephone: (206) 623-7292  
7 Facsimile: (206) 623-0594

8 Matthew D. Schelkopf (*pro hac vice*)  
9 *mds@sauderschelkopf.com*  
10 SAUDER SCHELKOPF LLC  
11 1109 Lancaster Avenue  
12 Berwyn, PA 19312  
13 Telephone: (610) 200-0581  
14 Facsimile: (610) 421-1326

15 *Co-Lead Class Counsel*

16 *[Additional counsel on signature page]*

17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 *In re: Hyundai and Kia Engine*  
20 *Litigation II*

Case No. 8:18-cv-02223-JLS-JDE

21 **PLAINTIFFS' NOTICE OF**  
22 **MOTION AND UNOPPOSED**  
23 **MOTION FOR FINAL**  
24 **APPROVAL OF CLASS ACTION**  
25 **SETTLEMENT**

26 Date: September 8, 2023

27 Time: 10:30 a.m.

28 Hon. Josephine L. Staton

Courtroom: 8A

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on September 8, 2023, at 10:30 a.m. before the Honorable Josephine L. Staton in Court 8A, 8th Floor, of the United States District Court for the Central District of California, located at First Street U.S. Courthouse, 350 West 1st St., Los Angeles, CA 90012, Plaintiffs Leslie Flaherty, Joanna Caballero, Sharon Moon, Stanton Vignes, Kesha Franklin Marbury, Christina Roos, James Carpenter, James J. Martino, James H. Palmer, John H. Caro, Ashley Gagas, Nicole Thornhill, Janet O'Brien, Robert Buettner, Linda Short, James Twigger, Jennifer and Anthony DiPardo, Seane Ronfeldt, Gabrielle Alexander, Tavish Carduff, Brian Frazier, Chad Perry, William Pressley, and Jeannett Smith will and hereby do move the Court for final approval of the class action settlement and reaffirm its certification of the settlement class.

Plaintiffs' unopposed motion is based on this notice; the accompanying Memorandum of Law; the Declaration of Steve W. Berman and its exhibits; the Declaration of Matthew D. Schelkopf and its exhibits; the Declaration of Gretchen Freeman Cappio; the Declaration of Adam R. Gonnelli and its exhibits; the Proposed Order Granting Plaintiffs' Motion for Final Approval of Class Action Settlement; and all other papers filed and proceedings had in this Action.

This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on June 30, 2023.

DATED: July 7, 2023

Respectfully submitted,

/s/ Steve W. Berman

Steve W. Berman (*pro hac vice*)

1301 Second Avenue, Suite 2000

HAGENS BERMAN SOBOL SHAPIRO LLP

Seattle, WA 98101

Telephone: (206) 623-7292

Facsimile: (206) 623-0594

steve@hbsslaw.com

1 Matthew D. Schelkopf (*pro hac vice*)  
2 Joseph B. Kenney  
3 SAUDER SCHELKOPF LLC  
4 1109 Lancaster Avenue  
5 Berwyn, PA 19312  
6 Telephone: (610) 200-0581  
7 Facsimile: (610) 421-1326  
8 mds@sauderschelkopf.com  
9 jbk@sauderschelkopf.com

10 *Co-Lead Class Counsel*

11 Gretchen Freeman Cappio (*pro hac vice*)  
12 Ryan McDevitt (*pro hac vice*)  
13 Adele Daniel  
14 KELLER ROHRBACK L.L.P.  
15 1201 Third Avenue, Suite 3200  
16 Seattle, WA 98101  
17 Telephone: (206) 623-1900  
18 Facsimile: (206) 623-3384  
19 gcappio@kellerrohrback.com  
20 rmcdevitt@kellerrohrback.com  
21 adaniel@kellerrohrback.com

22 *Settlement Counsel*

23 Bonner C. Walsh (*pro hac vice*)  
24 WALSH PLLC  
25 1561 Long Haul Road  
26 Grangeville, ID 83530  
27 Telephone: (541) 359-2827  
28 Facsimile: (866) 503-8206  
bonner@walshpllc.com

1 Adam Gonnelli (*pro hac vice*)  
2 LAW OFFICE OF ADAM R. GONNELLI, L.L.C.  
3 707 Alexander Road  
4 Bldg. 2, Suite 208  
5 Princeton, NJ, 08540  
6 Telephone: (917) 541-7110  
Facsimile: (315) 446-7521  
adam@arglawoffice.com

7 Rachel E. Fitzpatrick (*pro hac vice*)  
8 HAGENS BERMAN SOBOL SHAPIRO LLP  
9 11 W. Jefferson Street, Suite 1000  
10 Phoenix, AZ 85003  
11 Telephone: (602) 840-5900  
Facsimile: (602) 840-3012  
rachelf@hbsslaw.com

12 *Attorneys for Plaintiffs*  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## TABLE OF CONTENTS

		<u>Page</u>
1		
2		
3		
4	I. INTRODUCTION.....	1
5	II. FACTUAL BACKGROUND .....	2
6	A. Plaintiffs’ Allegations about the Engine Defect .....	2
7	B. The History of the Litigation .....	3
8	C. Settlement Negotiations and Global Resolution of the	
9	Litigation .....	4
10	D. Preliminary Approval of the Settlement .....	5
11	E. The Settlement Benefits and Their Value to the Class .....	6
12	1. 15-Year/150,000-Mile Extended Warranty	
13	Coverage and Free Inspection .....	9
14	2. Recalls and Product Improvements .....	11
15	3. Repair Reimbursements.....	12
16	4. Repair-Related Transportation and Towing	
17	Reimbursements .....	13
18	5. Inconvenience Payments for Repair Delays.....	14
19	6. Incidentals for Qualifying Engine Failure or Engine	
20	Fire .....	15
21	7. Lost Value for Sold or Traded-In Vehicles .....	16
22	8. Vehicles Destroyed by Engine Fire .....	17
23	9. Rebate Program .....	17
24	F. Settlement Notice.....	18
25	III. ARGUMENT .....	19
26		
27		
28		

1	A.	The Court Should Reaffirm Certification of the	
2		Settlement Class .....	19
3	B.	The Settlement Is Fair, Reasonable, and Adequate .....	20
4	1.	The Strength of Plaintiffs’ Case .....	21
5	2.	The Risk, Expense, Complexity, and Duration of	
6		Further Litigation.....	23
7	3.	The Risk of Maintaining the Class Action	
8		Throughout Trial.....	24
9	4.	The Amount and Type of Relief Offered in the	
10		Settlement .....	25
11	5.	The Discovery Completed and Stage of the	
12		Proceedings.....	27
13	6.	The Experience and Views of Counsel .....	28
14	7.	The Presence of a Governmental Participant .....	29
15	8.	The Reaction of the Class .....	29
16	9.	The Settlement Is Not the Product of Collusion.....	30
17	C.	Notice Was Given to All Class Members in a Reasonable	
18		Manner .....	32
19	IV.	CONCLUSION .....	33
20			
21			
22			
23			
24			
25			
26			
27			
28			

## TABLE OF AUTHORITIES

Page(s)

## CASES

<i>Acosta v. Trans Union, LLC</i> , 243 F.R.D. 377 (C.D. Cal. 2007) .....	24
<i>In re Bluetooth Headset Prod. Liab. Litig.</i> , 654 F.3d 935 (9th Cir. 2011) .....	21, 31
<i>Bravo v. Gale Triangle, Inc.</i> , 2017 WL 708766 (C.D. Cal. Feb. 16, 2017) .....	31
<i>Buettner v. Hyundai Motor America, Inc. et al.</i> , No. 8:21-cv-01057-JLS-JDE (C.D. Cal.) .....	4, 5
<i>Casey v. Doctor's Best, Inc.</i> , 2022 WL 1726080 (C.D. Cal. Feb. 28, 2022) .....	24, 32
<i>Chambers v. Whirlpool Corp.</i> , 214 F. Supp. 3d 877 (C.D. Cal. 2016) .....	20
<i>Chieco, et al. v. Kia Motors America, Inc., et al.</i> , No. 8:21-cv-00854-JLS-JDE (C.D. Cal.) .....	4
<i>Churchill Vill., L.L.C. v. Gen. Elec.</i> , 361 F.3d 566 (9th Cir. 2004) .....	33
<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268 (9th Cir. 1992) .....	20
<i>Clesceri v. Beach City Investigations &amp; Protective Servs., Inc.</i> , 2011 WL 320998 (C.D. Cal. Jan. 27, 2011) .....	27
<i>Contreras v. Armstrong Flooring</i> , 2021 WL 4352299 (C.D. Cal. July 6, 2021) .....	31
<i>Correa v. Zillow, Inc.</i> , 2021 WL 4925394 (C.D. Cal. June 14, 2021) .....	27
<i>Flaherty et al. v. Hyundai Motor Company, et al.</i> , No. 8:18-cv-02223-JLS-JDE (C.D. Cal.) .....	3, 4, 11

1	<i>In re Gen. Motors Corp. Pickup Truck Fuel Tank Prods. Liab. Litig.</i> ,	
2	1993 WL 204116 (E.D. Pa. June 10, 1993) .....	29
3	<i>Hardmon v. Ascena Retail Grp., Inc.</i> ,	
4	2022 WL 17572098 (C.D. Cal. Nov. 29, 2022) .....	29
5	<i>In re Hyundai &amp; Kia Fuel Econ. Litig.</i> ,	
6	926 F.3d 539 (9th Cir. 2019) (en banc) .....	20
7	<i>In re: Hyundai and Kia Engine Litig.</i> ,	
8	No. 8:17-cv-00838 (C.D. Cal.) .....	<i>passim</i>
9	<i>In re Immune Response Sec. Litig.</i> ,	
10	497 F. Supp. 2d 1166 (S.D. Cal. 2007) .....	29
11	<i>Kissel v. Code 42 Software, Inc.</i> ,	
12	2017 WL 10560526 (C.D. Cal. Oct. 4, 2017) .....	32
13	<i>Lane v. Facebook, Inc.</i> ,	
14	696 F.3d 811 (9th Cir. 2012) .....	20
15	<i>Linney v. Cellular Alaska P'ship</i> ,	
16	151 F.3d 1234 (9th Cir. 1998) .....	27
17	<i>Marbury et al. v. Hyundai Motor America et al.</i> ,	
18	No. 8:21-cv-00379-JLS-JDE (C.D. Cal.) .....	4, 5
19	<i>Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.</i> ,	
20	221 F.R.D. 523 (C.D. Cal. 2004) .....	24
21	<i>Officers for Justice v. Civil Serv. Comm'n</i> ,	
22	688 F.2d 615 (9th Cir. 1982) .....	20, 27
23	<i>In re Pac. Enters. Sec. Litig.</i> ,	
24	47 F.3d 373 (9th Cir. 1995) .....	29
25	<i>Rannis v. Recchia</i> ,	
26	380 F. App'x 646 (9th Cir. 2010) .....	32
27	<i>Ruiz v. JCP Logistics, Inc.</i> ,	
28	2016 WSL 6156212 (C.D. Cal. Aug. 12, 2016) .....	23, 24
	<i>Short et al. v. Hyundai Motor Company, et al.</i> ,	
	No. 2:19-cv-00318-JLR (W.D. Wash.) .....	<i>passim</i>



1	<i>Snider et al. v. Hyundai Motor America, et al.,</i>	
2	No. 2:19-cv-00371/3:19-cv-05193-JLR (W.D. Wash.) .....	3
3	<i>Staton v. Boeing Co.,</i>	
4	327 F.3d 938 (9th Cir. 2003) .....	20, 21
5	<i>Thornhill et al. v. Hyundai Motor Company et al.,</i>	
6	No. 8:21-cv-00481-JLS-JDE (C.D. Cal.) .....	4
7	<i>Wallace v. Countrywide Home Loans, Inc.,</i>	
8	2015 WL 13284517 (C.D. Cal. Apr. 17, 2015) .....	31
9	<i>Zubia v. Shamrock Foods Co.,</i>	
10	2017 WL 10541431 (C.D. Cal. Dec. 21, 2017) .....	24
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

## I. INTRODUCTION

Plaintiffs seek final approval of a class settlement benefitting the owners and lessees of nearly two million Hyundai and Kia vehicles equipped with Gamma and Nu gasoline direct injection (“GDI”) engines and Theta II multipoint fuel injection (“MPI”) engines that, due to an alleged engine defect, are susceptible to catastrophic engine failure and fire while in operation. The Settlement<sup>1</sup> was achieved after twenty months of formal arm’s-length negotiations and with the assistance of Hon. Edward A. Infante (Ret.), and thoroughly informed by Class Counsel’s fulsome and independent pre-suit investigations, their experience litigating and settling *Engine I*, the extensive litigation in *Short*, and the confirmatory discovery conducted here.

The Settlement provides an extended warranty that covers the engine defect for the expected useful life of the vehicle, free installation of the Knock Sensor Detection System (“KSDS”) to detect and prevent engine failure and fire, a free diagnostic inspection, reimbursement for certain out-of-pocket repairs, costs, and incidentals, goodwill payments, a rebate program, and reimbursement for sold or traded-in Class Vehicles<sup>2</sup> with a failed engine and Class Vehicles destroyed by fire. These Settlement benefits are conservatively estimated to be worth \$934 million. *See* Declaration of Adam R. Gonnelli (“Gonnelli Decl.”), Ex. 1 (Expert Report and Opinion of Susan K. Thompson (“Thompson Report”)).

After the Court preliminarily approved the Settlement on February 8, 2023, notice was sent to the Class via U.S. Mail and email, and dedicated settlement websites were established. The class member response to the Settlement has been overwhelmingly positive with 7,009 Settlement claims filed as of June 30, 2023; 577

---

<sup>1</sup> The capitalized terms herein are defined in the Settlement Agreement (“SA”). Doc. 79-2.

<sup>2</sup> The Class Vehicles are listed in section II.E *infra*.

1 class member declarations<sup>3</sup> submitted in support of the Settlement; and only 3  
2 objections received at the time of the filing of this motion. *See* Declaration of  
3 Matthew D. Schelkopf (“Schelkopf Decl.”) ¶ 20, Ex. A (Declaration of Amanda  
4 Sternberg (“Sternberg Decl.”)) ¶ 20; Ex. B (Declaration of Elizabeth Fernandez  
5 (“Fernandez Decl.”)) ¶ 14; Declaration of Steve W. Berman Decl. (“Berman Decl.”)  
6 ¶¶ 14, 17. Given the results achieved, the reaction of the Class, and the Ninth  
7 Circuit’s factors for approval of class action settlements, the Settlement is fair,  
8 reasonable, and adequate, and Plaintiffs respectfully request the Court grant final  
9 approval.

## 10 II. FACTUAL BACKGROUND

### 11 A. Plaintiffs’ Allegations about the Engine Defect

12 This litigation and Settlement derive from a similar alleged engine defect that  
13 was the subject of *In re: Hyundai and Kia Engine Litig.*, No. 8:17-cv-00838 (C.D.  
14 Cal.) (“*Engine I*”).<sup>4</sup> The alleged defect causes premature connecting rod bearing wear  
15 in affected engines, which, if manifested and left unremedied, results in catastrophic  
16 engine failure during operation, and in some cases engine fire (the “Engine Defect”).

17 In *Engine I*, Hyundai and Kia settled class claims involving Theta II GDI  
18 engines, but opposed Plaintiffs’ allegations that other Hyundai and Kia vehicles with  
19 different engines were impacted by the Engine Defect. Based on their thorough  
20 preliminary investigations and the ongoing complaints received from consumers  
21 about engine failures and fires in other engines, Class Counsel continued to  
22 investigate and pursue these claims even while settling *Engine I*. Those efforts led to  
23 the prosecution of this Action and produced the Settlement here, which resolves class  
24 claims about the Engine Defect in Theta II MPI, Gamma GDI, and Nu GDI engines.

25  
26 <sup>3</sup> Only 14 declarations did not support the Settlement. Two of these declarants  
27 submitted two declarations each.

28 <sup>4</sup> *Engine I* was also presided over by Judge Staton, who granted final approval to  
its settlement in May 2021.

**B. The History of the Litigation**

On December 14, 2018, Plaintiff Flaherty and other named plaintiffs who owned or leased Hyundai and Kia vehicles equipped with Gamma GDI and Theta II GDI engines filed the proposed nationwide class action *Flaherty et al. v. Hyundai Motor Company, et al.*, No. 8:18-cv-02223-JLS-JDE (C.D. Cal.). *Flaherty* was amended twice, on January 10, 2019, and May 1, 2019, to add Plaintiffs Carpenter, Caballero, Moon, and Vignes, who owned or leased Hyundai and Kia vehicles equipped with Gamma and Nu GDI engines, along with other plaintiffs not subject to this proposed Settlement. The claims of the *Flaherty* plaintiffs with Theta II GDI engines were settled as part of *Engine I*, and the remaining litigation was stayed pending that settlement, including claims concerning the Gamma and Nu GDI engines.

On March 4, 2019, Plaintiff Linda Short filed the proposed nationwide class action *Short et al. v. Hyundai Motor Company, et al.*, No. 2:19-cv-00318-JLR (W.D. Wash.), and following consolidation with a related action (*Snider et al. v. Hyundai Motor America, et al.*, No. 2:19-cv-00371/3:19-cv-05193-JLR (W.D. Wash.)), Plaintiffs Short, Twigger, Jennifer and Anthony DiPardo, Seane Ronfeldt, Gabrielle Alexander, Tavish Carduff, Brian Frazier, Chad Perry, William Pressley, and Jeannett Smith filed a consolidated amended complaint in *Short* on May 4, 2020. These actions also included allegations that the Gamma and Nu GDI and Theta II MPI engines suffered from the same defect as the Theta II GDI engines. Defendants vigorously opposed these allegations, and between 2019 and 2021, the *Short* case was litigated extensively. This included three successive motions to dismiss and active discovery, including depositions and expert testimony continuing right up until the start of global settlement negotiations among counsel in all pending actions (see section II.C *infra*).

On February 26, 2021, Plaintiffs Marbury, Roos, Palmer, Martino, Caro, and Gagas filed the proposed nationwide class action *Marbury et al. v. Hyundai Motor*

1 *America et al.*, No. 8:21-cv-00379-JLS-JDE (C.D. Cal.). On March 12, 2021,  
2 Plaintiffs Thornhill and O'Brien filed the proposed nationwide class action *Thornhill*  
3 *et al. v. Hyundai Motor Company et al.*, No. 8:21-cv-00481-JLS-JDE (C.D. Cal.). On  
4 June 15, 2021, Plaintiff Buettner filed the proposed nationwide class action *Buettner*  
5 *v. Hyundai Motor America, Inc. et al.*, No. 8:21-cv-01057-JLS-JDE (C.D. Cal.). Each  
6 of these actions alleged the Engine Defect in Hyundai and Kia vehicles with Theta II  
7 MPI engines.

8 On September 8, 2021, the Court ordered the *Flaherty*, *Marbury*, *Thornhill*,  
9 and *Buettner* cases consolidated as *In re: Hyundai and Kia Engine Litigation II*, No.  
10 8:18-cv-02223-JLS-JDE (C.D. Cal.) ("*Engine II*"). *Flaherty*, Doc. 55. On November  
11 8, 2021, Plaintiffs in *Engine II* filed a consolidated complaint. *Engine II*, Doc. 57. On  
12 August 25, 2022, the *Short* case was consolidated with *Engine II* (Doc. 71), and on  
13 September 13, 2022, Plaintiffs filed an amended consolidated complaint (Doc. 72).  
14 On May 31, 2022, and September 22, 2022, respectively, the Court related and then  
15 consolidated *Chieco, et al. v. Kia Motors America, Inc., et al.*, No. 8:21-cv-00854-  
16 JLS-JDE (C.D. Cal.), with *Engine II*.<sup>5</sup> *Chieco*, Doc. 98; *Engine II*, Doc. 77.

17 **C. Settlement Negotiations and Global Resolution of the Litigation**

18 While litigating *Engine I*, the parties agreed to stay the remaining *Flaherty*  
19 claims alleging that Gamma and Nu GDI engines also contained the Engine Defect  
20 because the parties strongly disagreed about which engines were afflicted. After the  
21 May 2021 final approval of *Engine I*'s settlement, the remaining *Flaherty* plaintiffs  
22 reinitiated this litigation with Defendants. Around the same time and based on their  
23 independent investigations into different engine types, Class Counsel filed the related  
24 proposed class actions *Marbury*, *Thornhill*, and *Buettner*, which expanded the scope  
25 of the Engine Defect litigation to include Hyundai and Kia vehicles equipped with  
26

27 <sup>5</sup> Since *Chieco*'s relation and consolidation to *Engine II*, counsel for the *Chieco*  
28 Plaintiffs have not communicated with Class Counsel about litigating or resolving  
class-wide claims for any overlapping proposed Class Vehicles.

1 Theta II MPI engines. Class Counsel and Settlement Counsel agreed to work together  
2 to cooperatively litigate the pending cases, which led to their consolidation as *Engine*  
3 *II*, and the parties continued their settlement discussions.

4 From December 2020 to February 2022, Class Counsel and Settlement  
5 Counsel met and conferred with Defendants' counsel on multiple occasions  
6 regarding the *Engine II* allegations, Defendants' defenses, and potential resolution.  
7 These meetings culminated in a mediation session before the Honorable Edward  
8 Infante (Ret.) of JAMS on February 22, 2022. Informed by the discovery and  
9 comprehensive expert reports from the *Short* litigation, Plaintiffs remained steadfast  
10 in their position that the alleged Engine Defect was more widespread than Defendants  
11 maintained. At mediation, the parties reached agreement on the overall settlement  
12 structure but not all the specific details, and so they continued to negotiate regularly  
13 through August 2022, when the parties ultimately agreed to the proposed Settlement  
14 (see section II.E *infra*).

15 To ensure the Settlement was fair, reasonable, and adequate, Class Counsel  
16 immediately began confirmatory discovery. On June 17, 2022, Plaintiffs served  
17 written discovery on Defendants. Defendants responded to Plaintiffs' requests on  
18 August 19, 2022, and began producing documents the week of August 22, 2022. The  
19 parties also negotiated a protective order, which Magistrate Judge Early entered on  
20 September 14, 2022. Doc. 75. Class Counsel reviewed more than 43,000 pages of  
21 documents, the most critical of which were hundreds of Korean technical documents  
22 detailing design and manufacturing issues regarding the Defect that required  
23 translation. Class Counsel deposed Defendants' corporate designees, Dr. Hongwook  
24 Lee and Dr. Joon Dong Oh, on December 6 and 8, 2022, respectively.

#### 25 **D. Preliminary Approval of the Settlement**

26 On September 26, 2022, Plaintiffs moved for preliminary approval of the  
27 Settlement. Doc. 79. On December 14, 2022, the Court requested supplemental  
28

1 briefing to: (1) identify the proposed settlement administrators and their  
2 qualifications, and if Defendants planned to self-administer, whether they could do  
3 so fairly, competently, efficiently, and impartially; (2) agree to provide an electronic  
4 opt-out procedure or justify the use of regular mail for opting out; and (3) explain the  
5 substantive differences between this Settlement and the *Engine I* settlement. Doc. 86.  
6 On January 13, 2023, the parties filed a joint supplemental brief in support of  
7 preliminary approval of the Settlement that addressed the proposed settlement  
8 administrators, opt-out procedures, and the material differences between the two  
9 settlements. Doc. 94. On February 8, 2023, the Court issued an Order, *inter alia*, (1)  
10 conditionally certifying the Settlement Class and preliminarily approving the  
11 Settlement; (2) setting a final fairness hearing for September 8, 2023, at 10:30 a.m.;  
12 (3) directing mail notice to all reasonably identifiable class members by June 7, 2023;  
13 (4) setting an August 7, 2023 deadline for all opt-outs and objections; and (5) setting  
14 deadlines for final approval, attorneys' fees and costs, and other supplemental  
15 briefing. Doc. 99.

16 **E. The Settlement Benefits and Their Value to the Class**

17 If approved, the Settlement provides substantial benefits to the following  
18 Class: All owners and lessees of a Class Vehicle who purchased or leased the Class  
19 Vehicle in the United States, including those that were purchased while the owner  
20 was abroad on active U.S. military duty, but excluding those purchased in U.S.  
21 territories or abroad.<sup>6</sup>

22  
23 <sup>6</sup> Excluded from the claims of the Class (and not released by this Settlement) are  
24 all claims for death, personal injury, property damage (other than damage to a Class  
25 Vehicle that is the subject of a Qualifying Repair), and subrogation. Also excluded  
26 from the Class are (a) HMA, HMC, KC, and KA; (b) any affiliate, parent, or  
27 subsidiary of HMA, HMC, KC, or KA; (c) any entity in which HMA, HMC, KC, or  
28 KA has a controlling interest; (d) any officer, director, or employee of HMA, HMC,  
KC, or KA; (e) any successor or assign of HMA, HMC, KC, or KA; (f) any judge to  
whom this Action is assigned, the judge's spouse or partner, and all persons within  
the third degree of relationship to either of them, as well as the spouses of such  
persons; (g) individuals and/or entities who validly and timely opt-out of the



The Class Vehicles include the following vehicle models that were originally equipped or replaced with the respective corresponding genuine engine type within Original Equipment Manufacturer (“OEM”) specifications.

MODEL YEAR	MODEL
2010–2012	Hyundai Santa Fe vehicles equipped with a Theta II 2.4-liter MPI engine
2011–2015	Hyundai Sonata Hybrid (HEV) vehicles equipped with a Theta II 2.4-liter MPI Hybrid engine
2016–2019	Hyundai Sonata Hybrid/Plug-In (HEV/PHEV) vehicles equipped with a Nu 2.0 GDI Hybrid engine
2010–2013	Hyundai Tucson vehicles equipped with a Theta II 2.4-liter MPI engine
2014–2021	Hyundai Tucson vehicles equipped with a Nu 2.0 GDI engine
2014	Hyundai Elantra Coupe vehicles equipped with a Nu 2.0 GDI engine
2014–2016	Hyundai Elantra vehicles equipped with a Nu 2.0 GDI engine
2014–2020	Hyundai Elantra GT vehicles equipped with a Nu 2.0 GDI engine
2012–2017	Hyundai Veloster vehicles equipped with a Gamma 1.6-liter GDI engine
2010–2013	Kia Forte vehicles equipped with a Theta II 2.4-liter MPI engine
2010–2013	Kia Forte Koup vehicles equipped with a Theta II 2.4-liter MPI engine

settlement; (h) consumers or businesses that have purchased Class Vehicles previously deemed a total loss, salvaged, branded, or obtained from a junkyard (subject to verification through Carfax or other means); (i) vehicle owners or lessees who rent or previously rented the Class Vehicle for use by third-party drivers, including leasing companies; (j) individuals and commercial entities engaged in the business of buying, selling, or dealing in motor vehicles, including new and used motor vehicle dealerships, franchisees, vehicle brokers, or automobile auction houses and individuals employed by or acting on behalf of such businesses; (k) banks, credit unions or other lienholders; and (l) current or former owners of a Class Vehicles who previously released their claims in an individual settlement with HMA, HMC, KC, or KA with respect to the issues raised the Action.



MODEL YEAR	MODEL
2014–2018	Kia Forte vehicles equipped with a Nu 2.0 GDI engine
2014–2016	Kia Forte Koup vehicles equipped with a Nu 2.0 GDI engine
2011–2016	Kia Optima Hybrid (HEV) vehicles equipped with a Theta II 2.4-liter MPI Hybrid engine
2017–2020	Kia Optima Hybrid/Plug-In (HEV/PHEV) vehicles equipped with a Nu 2.0 GDI Hybrid engine
2011–2013	Kia Sorento vehicles equipped with a Theta II 2.4-liter MPI engine
2012–2016	Kia Soul vehicles equipped with a Gamma 1.6-liter GDI engine
2014–2019	Kia Soul vehicles equipped with a Nu 2.0 GDI engine
2011–2013	Kia Sportage vehicles equipped with a Theta II 2.4-liter MPI engine.

There are 1,930,208 Class Vehicles, excluding those destroyed or with branded titles (indicating the vehicle suffered significant damage). Gonnelli Decl. ¶¶ 5-6, Ex. 1 (Thompson Report) ¶ 36.

Class Counsel retained expert Susan Thompson, a partner at economic consulting firm Hemming Morse, to value the Settlement because, unlike a common fund settlement, many of its benefits require expertise to quantify with precision. Gonnelli Decl., Ex. 1 (Thompson Report). Because the claims deadline for some of the Settlement’s readily calculable benefits, like cash reimbursement for repairs and towing, does not pass until after final approval, Thompson relied on the claims rates from the *Engine I* settlement to yield reasonable estimates for the Settlement here.

1           **1. 15-Year/150,000-Mile Extended Warranty Coverage and Free**  
2           **Inspection**

3           All Class Vehicles that timely complete the KSDS software update will receive  
4 a 15-year or 150,000-mile Extended Warranty<sup>7</sup> covering all costs associated with  
5 inspections and repairs, including replacement parts, labor, diagnoses, and  
6 mechanical or cosmetic damage caused by connecting rod bearing failure. Doc. 79-  
7 2, SA § II.A. Further, for ninety (90) days following the Final Approval Date, all  
8 Class Vehicles within the 15-year or 150,000-mile period that have not received a  
9 recall inspection<sup>8</sup> are eligible to schedule a free inspection and, if necessary, obtain  
10 Extended Warranty repairs regardless of transfer in ownership or lease or any prior  
11 repairs. *Id.* Defendants will also provide a comparable class of loaner vehicle to class  
12 members during Extended Warranty repairs, and if no loaner vehicle is reasonably  
13 available through Defendants' authorized dealerships, the class member is eligible  
14 for reimbursement up to \$80 per day for reasonable transportation expenses incurred  
15 until the Extended Warranty repairs are completed. *Id.*

16           The Extended Warranty providing coverage against the Engine Defect for the  
17 expected useful life of the Class Vehicles (15 years or 150,000 miles) is valued at  
18 \$786,947,007. Gonnelli Decl., Ex. 1 (Thompson Report) ¶ 43. Because Hyundai and  
19 Kia dealers do not offer a warranty that permits a direct price comparison to the  
20 Extended Warranty, the value of the Extended Warranty was derived from the  
21 MSRPs provided by Kia. First, Thompson reviewed the MSRP data and compared it  
22 on an engine-by-engine basis to the Hyundai Class Vehicles. *Id.* ¶ 42. This yielded  
23 an across-the-board set of comparable MSRPs. These values were conservatively  
24 extrapolated from ten to fifteen years. *Id.* ¶ 41. Thompson then used the percentage

25 \_\_\_\_\_  
26           <sup>7</sup> Claimants may only be denied Extended Warranty coverage for two reasons:  
27 Exceptional Neglect or KSDS Installation Neglect. *See id.* §§ I.J. and I.Q. KSDS  
28 installation is not a prerequisite for Extended Warranty coverage for Class Vehicles  
subject to recall. *See id.* § I.Q.

<sup>8</sup> Previous recall campaigns are discussed at section II.E.2 *infra*.

1 of the powertrain warranty that covers the short block as provided by Defendants  
2 (Gonnelli Decl. ¶ 11), to estimate the prices a consumer would be charged in the retail  
3 market for the Extended Warranty for each model Class Vehicle. Thompson Report  
4 ¶ 41.

5 Next, Thompson calculated the number of Class Vehicles eligible for  
6 Extended Warranty benefits. First, Thompson deducted the estimated number of  
7 Class Vehicles in service for more than 150,000 miles (which are not eligible for the  
8 Extended Warranty), which yielded a pool of 1,825,127 Class Vehicles. *Id.* ¶ 43.  
9 Second, Thompson deducted the 529,950 previously recalled Class Vehicles,<sup>9</sup> which  
10 do not require KSDS installation as a prerequisite to Extended Warranty benefits.  
11 This yielded a non-recall population of 1,295,177 Class Vehicles. *Id.* (Table 3).  
12 Third, Thompson applied the KSDS installation rates from the *Engine I* litigation to  
13 the non-recalled population and added the recalled population back for a total of  
14 1,686,342 Class Vehicles eligible for the Extended Warranty. Multiplying the  
15 number of eligible Class Vehicles by the estimated retail warranty prices yielded a  
16 value of \$436,015,591 for Kia Class Vehicles and \$350,931,415 for Hyundai Class  
17 Vehicles, for a total of \$786,947,007.

18 The value of the free inspection is estimated at \$65,792,453. The value was  
19 calculated based on the amount of labor for which a consumer would be charged for  
20 the inspection at a Hyundai or Kia dealership. *Id.* ¶¶ 48, 52. The amount of time to  
21 perform each inspection depends on how extensive the inspection needs to be before  
22 a connecting rod bearing problem is either located or ruled out. Hyundai lists nine  
23 possible iterations of diagnostic inspections in its April 28, 2022 *Service Campaign*  
24 issued to dealers. Gonnelli Decl. ¶ 15 and Ex. 9 at 8. Each of these inspections is  
25 associated with specific dealer labor hours, ranging from 0.2 to 1.7 hours. Hyundai  
26 estimated the percentage of Class Vehicles that would undergo each type of

27  
28 <sup>9</sup> 224,463 Hyundai Class Vehicles and 305,487 Kia Class Vehicles were subject  
to the recalls. See NHTSA Recall Nos. 20V746, 20V750, 21V727 and 21V844.

1 inspection and used a projected compliance rate for the free inspection based on its  
2 experience with the recalls. Thompson Report ¶¶ 46, 50.

3 To estimate the value of the free inspections, Thompson first calculated the  
4 number of Class Vehicles eligible for the free inspections by removing the Class  
5 Vehicles that had been in service for over 150,000 miles. Gonnelli Decl. ¶¶ 7-8;  
6 Thompson Report at Schedule 3. Thompson next applied Hyundai's compliance rate  
7 estimate to the eligible Hyundai and Kia Class Vehicle populations to project the  
8 number of Class Vehicles that would receive the inspection.<sup>10</sup> Thompson Report  
9 ¶¶ 46, 50. For Hyundai, Thompson calculated a weighted average of the amount of  
10 labor each inspection would require based on Hyundai's *Service Campaign* and the  
11 percentage of Class Vehicles projected to undergo each type of inspection. *Id.* ¶ 45.  
12 Kia did not have a similar breakdown of inspection types but provided an estimate of  
13 its average inspection labor. Gonnelli Decl. ¶ 18. Thompson then multiplied the  
14 average national hourly labor rates of Hyundai and Kia, respectively, to the total  
15 estimated hours projected for Hyundai Class Vehicle inspections. These calculations  
16 resulted in projected values of \$33,049,867 for Hyundai inspections and \$32,742,585  
17 for Kia inspections, for a total of \$65,792,453. Thompson Report ¶¶ 48, 52.

## 18 2. Recalls and Product Improvements

19 In December 2020, in the wake of continuing litigation and discussions among  
20 the parties in both *Flaherty* and *Short*, Hyundai recalled certain model year 2011-  
21 2013, 2016 Sonata Hybrid, 2012 Santa Fe, and 2015-2016 Veloster vehicles under  
22 NHTSA Recall No. 20V746, and Kia recalled certain model year 2012-2013 Sorento,  
23 2012-2015 Forte and Forte Koup, 2011-2013 Optima Hybrid, 2014-2015 Soul, and  
24 2012 Sportage vehicles under NHTSA Recall No. 20V750. Then in September and  
25 October 2021, respectively, Hyundai recalled certain model year 2017 Tucson and  
26 2017 Sonata Hybrid vehicles under NHTSA Recall No. 21V727, and Kia recalled

27  
28 <sup>10</sup> Kia did not have a corresponding figure.

1 certain model year 2017-2018 Optima Hybrid and Optima Hybrid Plug-In vehicles  
2 under NHTSA Recall No. 21V844.

3 Under the Settlement, all Class Vehicles are eligible for the KSDS software  
4 update, and as of October 2021, Defendants initiated these product improvement  
5 campaigns for the Class Vehicles. Doc. 79-2, SA § II.B. The KSDS is designed to  
6 monitor and detect premature connecting rod bearing wear and alert the driver before  
7 it results in engine seizure or fire. *Id.* § I.P. Defendants acknowledge these recalls  
8 and the KSDS represent part of the consideration to the Class under the Settlement.  
9 *Id.* § II.B.

10 Although the KSDS installation is free to class members, the labor required to  
11 install it is valued at \$70,701,739. Gonnelli Decl., Ex. 1 (Thompson Report) ¶ 58. As  
12 in *Engine I*, the installation here takes 0.3 hours of labor, but the labor rates of  
13 Hyundai and Kia have increased from *Engine I*. Gonnelli Decl. ¶¶ 25-26. Thompson  
14 multiplied the updated hourly labor rates by the time expended for the installation to  
15 calculate the respective costs for the KSDS installation. Thompson Report ¶ 58. She  
16 then multiplied the KSDS compliance rates from *Engine I* by the total Class Vehicle  
17 population (1,930,208), which netted 1,722,147 Class Vehicles estimated to obtain  
18 the KSDS for a projected value of \$70,951,740. *Id.* at Table 5.

### 19 **3. Repair Reimbursements**

20 Class members who obtained Qualifying Repairs for their Class Vehicles  
21 within the 15 years or 150,000 miles period and before receiving Settlement notice  
22 are eligible for full cash reimbursement, regardless of whether the Class member is  
23 an original owner, lessee, or subsequent purchaser, whether the repair was made at  
24 an authorized Hyundai or Kia dealership or third-party repair shop, and whether the  
25 repair was completed before or after the recall campaigns identified above.<sup>11</sup> Doc.  
26 79-2, SA § II.C. Class members are eligible for repair reimbursements even if

27 <sup>11</sup> Claimants may be denied repair reimbursement for Exceptional Neglect. Doc.  
28 79-2, SA § I.J.

1 Defendants initially denied warranty coverage for alleged failure to properly service  
2 or maintain the Class Vehicle. *Id.* Those who presented their Class Vehicle to an  
3 authorized dealership and were denied a warranty repair before receiving notice of  
4 this Settlement and then obtained their repair elsewhere are also eligible for a \$150  
5 goodwill payment. *Id.* To receive reimbursement, Claimants must submit their claim  
6 form and required documentation within ninety (90) days of the Final Approval  
7 Order. *Id.*

8 Although Class members have begun submitting Settlement claims, it is  
9 premature to calculate Defendants' payments to class members under this Settlement  
10 benefit. However, based on the approved repair reimbursement claims data in *Engine*  
11 *I*, Thompson projects Hyundai Class members will receive \$608,973 in  
12 reimbursement for prior dealer repairs and \$2,521,319 for prior third-party repairs,  
13 totaling \$3,130,292. Gonnelli Decl., Ex. 1 (Thompson Report) ¶ 62, Table 6.  
14 Similarly, Kia class members are projected to receive \$1,002,571 in reimbursement  
15 for prior dealer repairs and \$3,210,213 for prior third-party repairs, totaling  
16 \$4,212,784. *Id.* ¶ 66, Table 7. In addition, goodwill payments for repair denials are  
17 projected to be \$23,717 for Kia, and \$26,296 for Hyundai. *Id.* The total  
18 reimbursement for prior repairs, including goodwill payments, is projected to be  
19 \$7,393,089 for the Class. *Id.*

#### 20 **4. Repair-Related Transportation and Towing Reimbursements**

21 Class members may also seek cash reimbursement for all towing or other out-  
22 of-pocket expenses reasonably related to obtaining a Qualifying Repair, and up to  
23 \$80 per day for transportation expenses if a loaner vehicle was not originally  
24 provided by Defendants, so long as the Qualifying Repair occurs within the 15 years  
25 or 150,000 miles period.<sup>12</sup> Doc. 79-2, SA § II.D. This reimbursement is limited to no  
26

27 <sup>12</sup> Claimants may be denied reimbursement for Exceptional Neglect or KSDS  
28 Installation Neglect. Doc. 79-2, SA § II.D. KSDS Installation Neglect for purposes



1 more than 15 days before delivery of the Class Vehicle to the dealership or repair  
2 shop for the Qualifying Repair, and up to 3 business days after the Claimant was  
3 notified their vehicle was ready to be picked up. *Id.* Lost wages or other consequential  
4 damages are not reimbursable. *Id.* To receive reimbursement, Claimants must submit  
5 their claim form and required documentation within the later of ninety (90) days of  
6 the Final Approval Order (for a Qualifying Repair occurring on or before June 7,  
7 2023) or the date the expenses were incurred or paid (for a Qualifying Repair  
8 occurring after June 7, 2023). *Id.*

9 Like the repair reimbursement claims, it is premature to calculate Defendants'  
10 payments to class members for out-of-pocket repair-related towing and transportation  
11 expenses under this Settlement benefit. Based on the claims data in *Engine I* and  
12 using the ratio of the number of Class Vehicles in *Engine I* and *Engine II*, the  
13 projected reimbursement for towing and transportation expenses is at least \$737,635  
14 for Hyundai Class Vehicles and \$1,349,343 for Kia Class Vehicles, for a total of  
15 \$2,086,978. Gonnelli Decl., Ex. 1 (Thompson Report) ¶¶ 62, 66. This estimate is  
16 conservative, because it does not account for the doubling of transportation  
17 reimbursement from \$40 per day in *Engine I* to \$80 per day in *Engine II*. The claims  
18 reporting data in *Engine I* did not separate towing and rental expenses, so Thompson  
19 was not able to reliably project the increased value of the rental and transportation  
20 reimbursement. *Id.* at fns. 68, 74.

## 21 **5. Inconvenience Payments for Repair Delays**

22 Class members inconvenienced by repair delays exceeding sixty (60) days  
23 from an authorized Hyundai or Kia dealership may seek a goodwill payment based  
24 on the total cumulative delay length, so long as the Qualifying Repair occurs within  
25

26  
27  
28 of this Settlement benefit means the class member's failure to have the KSDS  
installed by November 4, 2023. *Id.* § I.Q.

1 the 15 years or 150,000 miles period.<sup>13</sup> Doc. 79-2, SA § II.E. For repair delays lasting  
2 between sixty-one (61) and one hundred and eighty (180) days, class members are  
3 eligible for a \$75 goodwill payment. *Id.* For repair delays lasting one hundred and  
4 eighty-one (181) days or longer, class members are eligible for a \$100 goodwill  
5 payment plus an additional \$100 payment for each 30-day period of delay thereafter.  
6 *Id.* To receive this payment, Claimants must submit their claim form and required  
7 documentation within ninety (90) days of the Final Approval Order (for a Qualifying  
8 Repair occurring on or before June 7, 2023) or the date the repair was completed (for  
9 a Qualifying Repair occurring after June 7, 2023).

10 To project the value of the inconvenience payments, Thompson examined the  
11 *Engine I* claims data and projected the number of claims based on the reported days  
12 of repair delay in *Engine I* to the smaller Class Vehicle population and increased the  
13 benefit schedule for *Engine II*, which yielded a total value of \$44,571. Gonnelli Decl.,  
14 Ex. 1 (Thompson Report) at Schedules 5 and 6.

#### 15 **6. Incidentals for Qualifying Engine Failure or Engine Fire**

16 Class members who experience a Qualifying Failure or Qualifying Fire while  
17 far from home may seek additional reimbursement for other reasonably related  
18 transportation, lodging, and meal expenses.<sup>14</sup> Doc. 79-2, SA § II.F. Claimants will  
19 receive reimbursement of full towing expenses. *Id.* In addition, where the Qualifying  
20 Failure or Qualifying Fire occurred within one hundred and fifty (150) miles of the  
21 class member's nearest residence, they are eligible for reimbursement of  
22 transportation expenses incurred on the date of the Qualifying Failure or Qualifying  
23

---

24 <sup>13</sup> Claimants may be denied reimbursement for Exceptional Neglect or KSDS  
25 Installation Neglect. Doc. 79-2, SA § II.E. KSDS Installation Neglect for purposes  
26 of this Settlement benefit means the Class member's failure to have the KSDS  
installed by November 4, 2023. *Id.* § I.Q.

27 <sup>14</sup> Claimants may be denied reimbursement for Exceptional Neglect or KSDS  
28 Installation Neglect. Doc. 79-2, SA § II.F. KSDS Installation Neglect for purposes  
of this Settlement benefit means the Class member's failure to have the KSDS  
installed by November 4, 2023. *Id.* § I.Q.



1 Fire up to \$125. *Id.* For a Qualifying Failure or Qualifying Fire occurring more than  
2 one hundred and fifty (150) miles from the class member's nearest residence at the  
3 time, they are eligible for reimbursement of transportation, lodging, and reasonable  
4 meal expenses incurred for a maximum of three days following the Qualifying  
5 Failure or Qualifying Fire of up to \$300 for the first day, \$200 for the second day,  
6 and \$100 for the third day. *Id.* To be eligible for these benefits, the Qualifying Failure  
7 or Qualifying Fire must occur within the 15 years or 150,000 miles period. *Id.* Lost  
8 wages or other consequential damages are not reimbursable. *Id.* To receive  
9 reimbursement, Claimants must submit their claim form and required documentation  
10 within ninety (90) days of the Final Approval Order (for a Qualifying Failure or  
11 Qualifying Fire occurring on or before June 7, 2023) or the date the repair was  
12 completed (for a Qualifying Failure or Qualifying Fire occurring after June 7, 2023).  
13 *Id.*

14 Thompson could glean no reliable data from the *Engine I* claim data to provide  
15 an opinion on the projected value of this benefit.

#### 16 **7. Lost Value for Sold or Traded-In Vehicles**

17 Class members who (1) experienced a Qualifying Failure or Qualifying Fire  
18 within the 15 years or 150,000 miles period and before receiving Settlement notice,  
19 and (2) sold or traded-in the Class Vehicle before June 7, 2023, without first  
20 procuring the recommended repair are entitled to \$150 plus reimbursement of the  
21 Class Vehicle's baseline Black Book value (i.e., wholesale used vehicle value) at the  
22 time of loss minus the actual amount received from the sale or trade-in.<sup>15</sup> Doc. 79-2,  
23 SA § II.G. The Black Book value is a standardized value used by car dealers to  
24 determine what to pay a consumer for a vehicle (or the wholesale value). To receive  
25 payment, Claimants must submit their claim form and required documentation within  
26 ninety (90) days of the Final Approval Order. *Id.*

27 <sup>15</sup> Claimants may be denied reimbursement for Exceptional Neglect. Doc. 79-2,  
28 SA § II.G.

1 Based on the *Engine I* approved claims data, Thompson estimates that *Engine*  
2 *II* class members with Hyundai vehicles will receive \$429,949 and Kia class  
3 members will receive \$512,998, for a total projected benefit of \$942,947. Gonnelli  
4 Decl., Ex. 1 (Thompson Report) at Schedules 5 and 6.

5 **8. Vehicles Destroyed by Engine Fire**

6 Class members with Class Vehicles destroyed by a Qualifying Fire within the  
7 15 years or 150,000 miles period are entitled to a \$150 goodwill payment plus  
8 reimbursement of the Class Vehicle's maximum Black Book value (i.e., private  
9 party/very good) at the time of loss minus any value received for the vehicle.<sup>16</sup> Doc.  
10 79-2, SA § II.H. The maximum Black Book value, as opposed to the baseline value  
11 used for sales or trade-ins, represents a reasonable estimate of the maximum amount  
12 a consumer could receive from a dealer for the car. To receive payment, Claimants  
13 must submit their claim form and required documentation within ninety (90) days of  
14 the Final Approval Order (for a Qualifying Fire occurring on or before June 7, 2023)  
15 or within ninety (90) days after the Qualifying Fire occurred (for a Qualifying Fire  
16 occurring after June 7, 2023). *Id.*

17 Like the Loss of Value for Sold or Traded in benefit, Thompson estimated the  
18 value of the Engine Fire Vehicle Loss based on *Engine I* approved claims. Kia class  
19 members are projected to receive \$587,394 and Hyundai class members \$122,037,  
20 for a total projected value of \$709,431. Gonnelli Decl., Ex. 1 (Thompson Report) at  
21 Schedules 5 and 6.

22 **9. Rebate Program**

23 Class members who (1) experience a Qualifying Failure or Qualifying Fire  
24 within the 15 years or 150,000 miles period, (2) lose faith in their Class Vehicle  
25

26 <sup>16</sup> Claimants may be denied reimbursement for Exceptional Neglect or KSDS  
27 Installation Neglect. Doc. 79-2, SA § II.H. KSDS Installation Neglect for purposes  
28 of this Settlement benefit means the Class member's failure to have the KSDS  
installed by November 4, 2023. *Id.* § I.Q.

1 because of the Settlement, (3) sell their Class Vehicle in an arm's-length sale or trade,  
2 and (4) purchase a replacement Hyundai (for Hyundai class members) or Kia (for  
3 Kia class members) vehicle are eligible for a rebate.<sup>17</sup> Doc. 79-2, SA § II.I. The rebate  
4 will be calculated as the difference between the value the Claimant received at trade-  
5 in or sale and the Class Vehicle's maximum Black Book value (*i.e.*, private party/very  
6 good) at the time of the relevant KSDS campaign launch for their Class Vehicle,  
7 irrespective of any underlying vehicle loans, up to the following amounts: (a) \$2,500  
8 for model year 2010-2012 Class Vehicles; (b) \$2,000 for model year 2013-2014  
9 Class Vehicles; (c) \$1,500 for model year 2015-2016 Class Vehicles; and (d) \$1,000  
10 for model year 2017-2021 model year Class Vehicles. *Id.* To receive the rebate,  
11 Claimants must submit their claim form and required documentation within ninety  
12 (90) days of the Final Approval Order (for a Qualifying Failure or Qualifying Fire  
13 occurring on or before June 7, 2023) or the date of the Qualify Failure or Qualifying  
14 Fire (for a Qualifying Failure or Qualifying Fire occurring after June 7, 2023). *Id.*

15 Based on the *Engine I* approved rebate claims, Thompson estimates that Kia  
16 class members will receive \$52,758 and Hyundai class members will receive \$91,560  
17 for a total projected value of \$144,318. Gonnelli Decl., Ex. 1 (Thompson Report) at  
18 Schedules 5 and 6.

#### 19 **F. Settlement Notice**

20 Class notice was carried out by Hyundai (for Hyundai class members) and  
21 Epiq for (Kia class members). Schelkopf Decl., Ex. A (Sternberg Decl.); Ex. B  
22 (Fernandez Decl.). In total, 5,046,347 first-class mail notices went out. Sternberg  
23 Decl. ¶ 10; Fernandez Decl. ¶ 10. Email notice was sent to 2,718,834 email  
24 addresses. Sternberg Decl. ¶ 12; Fernandez Decl. ¶ 12. As of June 30, 2023, the  
25

26 <sup>17</sup> Claimants may be denied reimbursement for Exceptional Neglect or KSDS  
27 Installation Neglect. Doc. 79-2, SA § II.I. KSDS Installation Neglect for purposes of  
28 this Settlement benefit means the Class member's failure to have the KSDS installed  
by November 4, 2023. *Id.* at § I.Q.

1 Settlement-dedicated phone lines established by Hyundai and Epiq have received  
2 96,435 calls. Sternberg Decl. ¶ 17; Fernandez Decl. ¶ 5. As of June 30, 2023, 3,536  
3 Kia class members have submitted claims and 3,473 Hyundai class members have  
4 submitted claims. Sternberg Decl. ¶ 20; Fernandez Decl. ¶ 14.

5 As of July 6, 2023, Class Counsel have received 3 objections and 201 requests  
6 for exclusion (78 for Hyundai and 123 for Kia). Given the Class size, these objections  
7 and opt-outs together represent slightly more than one one-hundredth of one percent  
8 (.010569%) of the Class solely based on the 1,930,208 Class Vehicle population.

### 9 III. ARGUMENT

#### 10 A. The Court Should Reaffirm Certification of the Settlement Class

11 On February 8, 2023, the Court conditionally certified the Class and granted  
12 preliminary approval to the Settlement, finding the requirements under Rules 23(a)  
13 and 23(b)(3) were satisfied. Doc. 99 at 9-14. *See* Fed. R. Civ. P. 23 advisory  
14 committee’s note to 2018 Amendment (“The decision to [grant preliminary approval  
15 and] give notice of a proposed settlement to the class is an important Event ... [that]  
16 should be based on a solid record supporting the conclusion that the proposed  
17 settlement will likely earn final approval after notice and an opportunity to object.”).  
18 Nothing has changed that would affect the Court’s ruling on class certification, and  
19 no Settlement objections challenge the propriety of the class certification here (i.e.,  
20 the objections received to date only seek to expand the Settlement’s relief). *See*  
21 *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877 (C.D. Cal. 2016) (reconfirming  
22 certification in preliminary approval order “[b]ecause the circumstances have not  
23 changed” since order); *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556-57  
24 (9th Cir. 2019) (en banc) (acknowledging class certification criteria must be applied  
25 “differently in litigation classes and settlement classes” and in the latter, focus should  
26 be proposed settlement’s fairness and class definition). Accordingly, the Court  
27 should grant final approval of the Settlement Class. *See Class Plaintiffs v. City of*  
28

1 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (finding strong judicial policy favors  
2 settlement of class actions).

3 **B. The Settlement Is Fair, Reasonable, and Adequate**

4 To grant final approval, the Court must find the Settlement fair, reasonable,  
5 and adequate. Fed. R. Civ. P. 23(e)(2); *see Lane v. Facebook, Inc.*, 696 F.3d 811, 819  
6 (9th Cir. 2012) (“the question whether a settlement is fundamentally fair within the  
7 meaning of Rule 23(e) is different from the question whether the settlement is perfect  
8 in the estimation of the reviewing court”). In the Ninth Circuit, courts consider the  
9 following non-exhaustive factors in conducting this fairness analysis: (1) the strength  
10 of plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further  
11 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the  
12 amount offered in settlement; (5) the extent of discovery completed, and the stage of  
13 the proceedings; (6) the experience and views of counsel; (7) the presence of a  
14 governmental participant; and (8) the reaction of the class members to the proposed  
15 settlement. *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (internal citations  
16 and quotation marks omitted). “The relative degree of importance to be attached to  
17 any particular factor will depend upon and be dictated by the nature of the claim(s)  
18 advanced, the type(s) of relief sought, and the unique facts and circumstances  
19 presented by each individual case.” *Officers for Justice v. Civil Serv. Comm’n*, 688  
20 F.2d 615, 625 (9th Cir. 1982). “It is the settlement taken as a whole, rather than the  
21 individual component parts, that must be examined for overall fairness, and the  
22 settlement must stand or fall in its entirety.” *Staton*, 327 F.3d at 960 (quoting *Hanlon*  
23 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

24 Where, like here, a settlement is reached before formal class certification, the  
25 Court must also consider whether the settlement is the “product of collusion among  
26 the negotiating parties.” *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935,  
27  
28

1 947 (9th Cir. 2011) (quoting *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458  
2 (9th Cir. 2000)).

3 The Fed. R. Civ. P. 23(e)(2) factors for settlement approval substantially  
4 overlap with the Ninth Circuit's factors analyzed herein and at preliminary approval.  
5 The Court considered and found that Plaintiffs and Class Counsel adequately  
6 represented the Settlement Class at preliminary approval. Doc. 99 at 11-12. *See* Fed.  
7 R. Civ. P. 23(e)(2)(A). The Court also found no signs of collusion or improper  
8 bargaining at preliminary approval (Doc. 99 at 22), and Plaintiffs revisit this in  
9 section III.B.9 *infra*. *See* Fed. R. Civ. P. 23(e)(2)(B) (whether the settlement was  
10 negotiated at arm's length). Plaintiffs address the adequacy of the Settlement relief  
11 in sections III.B.1-6, 8 *infra*. *See* Fed. R. Civ. P. 23(e)(2)(C) (requiring consideration  
12 of costs, risks, and delay of trial and appeal (*see* sections III.B.2-3 *infra*);  
13 effectiveness of method for distributing settlement relief, including claims processing  
14 (*see* section III.B.4 *infra*); terms of any proposed award of attorney's fees, including  
15 timing of payment (*see* Doc. 79-2, SA § V; section III.B.9 *infra*, and Plaintiffs'  
16 motion for attorneys' fees filed concurrently herewith); and any agreement identified  
17 under Rule 23(e)(3) (other than Settlement Agreement, none)). Last, the Court found  
18 the Settlement compensates class members for their harm suffered (Doc. 99 at 19),  
19 and Plaintiffs address the Settlement's equitable treatment of class members relative  
20 to each other in section III.B.4 *infra*. *See* Fed. R. Civ. P. 23(e)(2)(D).

### 21 **1. The Strength of Plaintiffs' Case**

22 At preliminary approval, the Court considered the strength of Plaintiffs' case  
23 and found this factor weighed in favor of approval. Doc. 99 at 17. Plaintiffs allege  
24 that Defendants sold Class Vehicles with defectively manufactured engines that are  
25 susceptible to sudden and catastrophic engine failure and a risk of engine fire. Engine  
26 failures and fires are expensive, destructive, and pose serious safety risks to  
27 consumers and other drivers. The alleged Engine Defect can potentially manifest in  
28



1 any Class Vehicle, necessitating recalls and KSDS implementation (which occurred  
2 during this litigation) for early engine wear detection and repair. Defendants claim  
3 they improved their design and manufacturing processes to reduce and potentially  
4 eliminate the problem in later model years, but as Class Counsel's ongoing  
5 investigations have shown, additional models continue to be impacted. Without the  
6 KSDS, it is impossible to identify and repair those Class Vehicles that will manifest  
7 the Defect before danger occurs. If the case did not settle and the litigation continued,  
8 Plaintiffs intend to show that Defendants knew about this dangerous safety defect  
9 before Class Vehicles were sold, and that Class Vehicle engines can and do fail even  
10 where properly maintained. Class Counsel are poised to prove Defendants violated  
11 numerous state consumer protection statutes, breached state and federal warranty  
12 laws, and engaged in fraud by failing to disclose a known safety defect that put  
13 consumers in avoidable danger and caused them to incur expensive and lengthy  
14 repairs.

15 But Class Counsel are seasoned automotive class action litigators and  
16 recognize the risks to proving full or partial liability here. Berman Decl. ¶¶ 3-4;  
17 Schelkopf Decl. ¶ 3; Declaration of Gretchen Freeman Cappio ("Cappio Decl.") ¶ 3.  
18 For example, Defendants will argue there was no fraud because they did not have  
19 knowledge of the Engine Defect before many of the Class Vehicles were sold. They  
20 will also argue that not all class members have been harmed because some Class  
21 Vehicles will never manifest the Defect, and for those that do, Defendants developed  
22 the KSDS to detect and alert class members to prevent engine failure and fire at all.  
23 Defendants will also argue that Class Vehicles' individual service histories bear on  
24 whether their engines fail, and thus Rule 23(b)(3) certification is inappropriate.  
25 Defendants will also likely argue they made affected class members whole by  
26 covering many engine repairs under warranty or through goodwill, and that  
27 uncovered repairs were fairly denied because inspection revealed poor vehicle  
28

1 maintenance. Accordingly, “these potential obstacles weigh in favor of granting final  
2 approval.” *Ruiz v. JCP Logistics, Inc.*, 2016 WSL 6156212, at \*4 (C.D. Cal. Aug. 12,  
3 2016) (Staton, J.) (despite plaintiff’s confidence in prevailing on class-wide basis,  
4 various legal and factual challenges remained).

5 **2. The Risk, Expense, Complexity, and Duration of Further**  
6 **Litigation**

7 The litigation will be protracted and costly if the parties cannot resolve this  
8 case through settlement, and as the Court noted at preliminary approval, “early  
9 resolution provides a benefit to class members that might not be present even if  
10 Plaintiffs were ultimately to succeed at every stage of trial and post-trial litigation.”  
11 Doc. 99 at 18. Class Counsel frequently litigate automotive class actions that take  
12 several years to resolve, while some have gone on for over a decade with appeals.  
13 Before trying this case, the parties would brief motions to dismiss, conduct discovery,  
14 brief class certification (along with a potential Rule 23(f) appeal), and brief summary  
15 judgment and *Daubert* motions, in addition to expending considerable resources on  
16 electronic discovery, depositions, and expert witnesses. It is unlikely the case would  
17 reach trial before 2024, with additional post-trial activity to follow. Even if Plaintiffs  
18 prevail at trial and on appeal, the recovery and its benefits to the Class would be  
19 diminished and delayed by years. In that time, more class members will have sold  
20 their vehicles or experienced the defect and lost money out-of-pocket, more Class  
21 Vehicles will age out of the Extended Warranty and other benefits, and more class  
22 members would be at risk for engine seizure or fire (when this Settlement would  
23 otherwise notify them and remedy these risks). Delay also makes locating class  
24 members and distributing damage awards, and obtaining the required documentation  
25 for such awards, more difficult. Put simply, a trial victory several years from now is  
26 not likely to deliver results superior to the proposed Settlement.

27 The proposed Settlement balances these costs, risks, and potential for delay  
28 with its benefits, achieving a settlement that offers immediate and substantial relief



1 to the Class. *See Casey v. Doctor's Best, Inc.*, 2022 WL 1726080, at \*8 (C.D. Cal.  
2 Feb. 28, 2022) (observing that even if plaintiff prevailed at every stage, the possibility  
3 of lengthy appeals evidenced substantial risk of further litigation); *Nat'l Rural*  
4 *Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("In most  
5 situations, unless the settlement is clearly inadequate, its acceptance and approval are  
6 preferable to lengthy and expensive litigation with uncertain results."); *Ruiz*, 2016  
7 WL 6156212, at \*5 ("Settlement eliminates the risks inherent in continued litigation,  
8 and it may be the last chance for class members to obtain relief.").

9 **3. The Risk of Maintaining the Class Action Throughout Trial**

10 There is real and substantial risk that Plaintiffs cannot maintain a nationwide  
11 class, as provided in the Settlement, through trial, and the Court likewise found this  
12 factor weighed in favor of approval. Doc. 99 at 18. *See Acosta v. Trans Union, LLC*,  
13 243 F.R.D. 377, 392 (C.D. Cal. 2007) (acknowledging value of class action depends  
14 largely on certification and "class certification undeniably represents a serious risk  
15 for plaintiffs in any class action") (quoting *In re Gen. Motors Corp. Pick-Up Truck*  
16 *Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 817 (3d Cir. 1995)). Defendants maintain  
17 that the Class Vehicles are not defective. And Defendants will argue that even if there  
18 is a Defect, it is not uniform across all Class Vehicles. If the Court grants class  
19 certification, Defendants will likely file a 23(f) petition and motions to decertify the  
20 class. Given these facts, the Settlement is preferable to undertaking the risk of  
21 maintaining the class action through trial. *Zubia v. Shamrock Foods Co.*, 2017 WL  
22 10541431, at \*12 (C.D. Cal. Dec. 21, 2017) (finding class certification uncertainty  
23 favors settlement approval where "settlement was reached prior to a hearing on  
24 Plaintiffs' motion for class certification ... a time when there was still risk that the  
25 class would not be certified by the Court.") (quoting *Chambers*, 214 F. Supp. 3d at  
26 888-89).

1           **4. The Amount and Type of Relief Offered in the Settlement**

2           The Settlement offers an excellent result for the Class, and the Court found its  
3 relief “comprehensive in compensating class members for the harms suffered and  
4 providing protection against future harms” at preliminary approval. Doc. 99 at 19.  
5 Even with conservative assumptions, the Extended Warranty is worth over \$934  
6 million to the Class. Gonnelli Decl., Ex. 1 (Thompson Report) ¶ 9. Based on the  
7 compliance rates of recalls and the experience of *Engine I*, the inspections and KSDS  
8 installations are estimated to provide over \$135 million in value to the Class. *Id.* ¶  
9 9(b)-(c). In addition, the out-of-pocket reimbursements for repairs, towing, rentals,  
10 and related incidentals is projected to be over \$11 million based on the approved  
11 claims in *Engine I*. *Id.* ¶ 9(d). The Settlement has also proven effective in informing  
12 class members about the KSDS remedy and encouraging its installation. As of June  
13 28, 2023, more than half of Class Vehicles have had the KSDS installed. *See* Gonnelli  
14 Decl., Ex. 10 (Declaration of Elizabeth Fernandez regarding Knock Sensor Detection  
15 Software (KSDS) Installation Rates (“Fernandez KSDS Decl.”)) ¶ 8; Ex. 11  
16 (Declaration of Alex Lee regarding Knock Sensor Detection Software (KSDS)  
17 Installation Rates (“Lee Decl.”)) ¶ 8. Class members with the KSDS installed  
18 automatically receive the Extended Warranty and are eligible for other Settlement  
19 benefits (e.g., transportation, towing, and incidental reimbursements). Defendants’  
20 dealerships have also received notice of the KSDS remedy and, in addition to  
21 performing the engine inspections and KSDS installations, must provide a pamphlet  
22 to vehicle owners detailing the Extended Warranty coverage.

23           The proposed Settlement provides class members with largely everything  
24 Plaintiffs sought in their complaints. Defendants are warning affected drivers about  
25 the Engine Defect risks, remedying the risks via KSDS installation, and offering an  
26 Extended Warranty that allows free inspections and necessary repairs within the  
27 expected useful life of the Class Vehicles (15 years or 150,000 miles). Although  
28 Plaintiffs initially sought lifetime warranties as they did in *Engine I*, safety

1 considerations subsequently raised in discussions between NHTSA and Defendants  
2 indicated that the Extended Warranty is preferable and appropriate so that consumers  
3 are not incentivized to drive their Class Vehicles beyond their contemplated useful  
4 lives. Doc. 81-1 (Decl. of Brian Latouf) ¶¶ 7-14. And Plaintiffs' concession on the  
5 lifetime warranty term netted enhanced benefits in other Settlement categories as  
6 compared to *Engine I*, such as increased transportation reimbursements (\$80 per  
7 day), reimbursements for transportation, lodging, and meals for certain Qualifying  
8 Failures and Qualifying Fires, and increased goodwill and inconvenience payments.  
9 Like in *Engine I*, class members will still receive full reimbursement for towing  
10 expenses and past repairs, compensation for sold or traded-in Class Vehicles that  
11 experienced a Qualifying Failure or Class Vehicles that were destroyed in a  
12 Qualifying Fire, and a rebate for lost faith in their Class Vehicles. To receive cash  
13 payments under the Settlement, class members must complete a claim form and  
14 submit the required documentation, all of which can be done electronically. The BBB  
15 process applies to both Settlement claims and warranty coverage denials and provides  
16 a more streamlined appeals process. At preliminary approval, the Court found "the  
17 differences between the [*Engine I* settlement and the Settlement here] do not raise  
18 concerns about the reasonableness of the [Settlement]." Doc. 99 at 20. Although it is  
19 unlikely trial would produce a better result, the Settlement need not be the best  
20 possible outcome to meet the standard for approval. *See Officers for Justice*, 688 F.2d  
21 at 628 ("It is well-settled law that a cash settlement amounting to only a fraction of  
22 the potential recovery will not per se render the settlement inadequate or unfair.")  
23 (citing *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173-74 (4th Cir. 1975)); *Correa v.*  
24 *Zillow, Inc.*, 2021 WL 4925394, at \*5 (C.D. Cal. June 14, 2021) (approving  
25 settlement that represented approximately 13.75% of the defendant's total potential  
26 exposure).

1 Further, no group of class members is favored over any other in the Settlement  
2 and class members are offered multiple categories of relief and compensation that  
3 reflect the varying degrees to which they were harmed as a result of the Defect. All  
4 class members are eligible for the KSDS remedy which will monitor and alert them  
5 to engine failure before it occurs, effectively eliminating the Defect's risk. Class  
6 members for whom the Defect manifested within the 15 years or 150,000 miles  
7 period are eligible for reimbursement and compensation commensurate with their  
8 harm (e.g., vehicle value and goodwill payments for Class Vehicles destroyed by  
9 fire), and these class members receive equal treatment within these relief categories  
10 (e.g., Black Book values, uniform caps on certain reimbursements). The Settlement  
11 relief is fair, adequate, and reasonable, and it should be finally approved.

12 **5. The Discovery Completed and Stage of the Proceedings**

13 The Court must evaluate whether "the parties have sufficient information to  
14 make an informed decision about settlement." *Linney v. Cellular Alaska P'ship*, 151  
15 F.3d 1234, 1239 (9th Cir. 1998). Discovery can be both formal and informal, and  
16 "plaintiffs may rely on discovery developed in prior or related proceedings." *See id.*  
17 at 1239-40; *see also Clesceri v. Beach City Investigations & Protective Servs., Inc.*,  
18 2011 WL 320998, at \*9 (C.D. Cal. Jan. 27, 2011) (Staton, J.).

19 Here, Class Counsel conducted significant, independent pre-suit investigations  
20 that included speaking with putative class members and reviewing their documents,  
21 consulting automotive experts regarding the design and performance of Hyundai and  
22 Kia's engines, reviewing relevant regulatory documents, and investigating potential  
23 legal claims. Berman Decl. ¶ 5; Schelkopf Decl. ¶ 4; Cappio Decl. ¶ 4. Once on file,  
24 Class Counsel continued to communicate with hundreds of putative class members  
25 about the Defect and reviewed and discussed Defendants' information about the  
26 Defect and impacted vehicles in informal resolution discussions between the parties.  
27 Berman Decl. ¶ 6; Schelkopf Decl. ¶ 4; Cappio Decl. ¶ 6. Class Counsel also utilized  
28

1 the relevant information it obtained in litigating *Engine I* to help inform this  
2 Settlement. Berman Decl. ¶ 7; Schelkopf Decl. ¶ 5. After reaching the Settlement,  
3 Class Counsel conducted formal confirmatory discovery that included written  
4 discovery, document review (more than 43,000 pages) that required translation for  
5 the most critical documents, and two depositions of Defendants’ corporate  
6 representatives. Berman Decl. ¶ 10; Schelkopf Decl. ¶¶ 14-18. And as this Court  
7 acknowledged at preliminary approval, “Settlement Counsel had the benefit of  
8 formal discovery in the *Short* lawsuit” before it was joined with the other pending  
9 actions. Doc. 99 at 20. This included significant document review (“thousands of  
10 pages of technical and engineering documents, including design, testing, and service  
11 bulletin information [and] voluminous, detailed data on hundreds of thousands of  
12 repairs and warranty claims, including diagnostic information and comments from  
13 the technicians who worked on class members’ vehicles”) and expert analysis  
14 (“highly qualified experts reviewed these documents and data closely, and both  
15 engineering and economic experts provided counsel with detailed reports based on  
16 this discovery”). *Id.* Plaintiffs have sufficient information to make an informed  
17 decision in settling this case. *See id.* at 21.

## 18 **6. The Experience and Views of Counsel**

19 As this Court found at preliminary approval, Class Counsel are “experienced  
20 and knowledgeable in this area of the law, and all have endorsed the Settlement  
21 Agreement.” Doc. 99 at 21. *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d  
22 1166, 1174 (S.D. Cal. 2007) (representation by competent counsel familiar with  
23 relevant area of law and strengths and weaknesses of parties’ respective positions  
24 suggests reasonableness of settlement); *see also In re Pac. Enters. Sec. Litig.*, 47 F.3d  
25 373, 378 (9th Cir. 1995) (“Parties represented by competent counsel are better  
26 positioned than courts to produce a settlement that fairly reflects each party’s  
27 expected outcome in litigation.”). After completing confirmatory discovery, Class  
28

Counsel maintain that the Settlement offers an excellent result and is in the best interest of the Class. Schelkopf Decl. ¶ 3; Berman Decl. ¶ 4; Cappio Decl. ¶ 4. *See Hardmon v. Ascena Retail Grp., Inc.*, 2022 WL 17572098, at \*6 (C.D. Cal. Nov. 29, 2022) (“The recommendations of plaintiffs’ counsel should be given a presumption of reasonableness.” (citation omitted)).

#### **7. The Presence of a Governmental Participant**

Defendants voluntarily recalled certain Class Vehicles with NHTSA’s oversight as described in section II.E.2 *supra*, but otherwise there was no governmental participant in this litigation and this factor is inapplicable. This Settlement provides immediate benefit to class members instead of relying on a protracted NHTSA investigation to produce relief. *See generally In re Gen. Motors Corp. Pickup Truck Fuel Tank Prods. Liab. Litig.*, 1993 WL 204116, at \*3 (E.D. Pa. June 10, 1993) (noting NHTSA proceedings can take several years to conclude).

#### **8. The Reaction of the Class**

Much like in *Engine I*, the Class’s reaction to the Settlement has been overwhelmingly positive. As of June 30, 2023, class members have filed 7,009 Settlement claims, submitted 577 declarations supporting the Settlement, and only 3 have lodged objections. Schelkopf Decl., Ex. A (Sternberg Decl.) ¶ 20, Ex. B (Fernandez Decl.) ¶ 14; Berman Decl. ¶¶ 14, 17.

At the Court’s direction, Class Counsel obtained declarations from class members about their views of the Settlement.<sup>18</sup> *See* Doc. 99 at 21. Of the 589 Class members who provided declarations, 577 supported the Settlement and want to see it approved, while only 12 did not support the Settlement (less than 3%). Berman Decl. ¶ 14. Most declarants found the relief fully satisfactory (some 380 class members)

---

<sup>18</sup> Class Counsel have provided the Court with all the non-supporting declarations, but only a random sample of the supporting declarations received (100 of 577). Berman Decl. ¶¶ 15-16. All declarations are available for the Court’s review on request. *Id.*



1 while others, though they supported the Settlement, found it unsatisfactory. *Id.* Most  
2 of the unsatisfied declarants did not give a specific reason, but instead highlighted  
3 their frustrations with their vehicle. *Id.* Others stated they either wanted greater relief  
4 (44 declarants) or were frustrated by the claims process (25 declarants). *Id.* To Class  
5 Counsel’s knowledge, this direct request for declarations is unique to this case and  
6 *Engine I*, but with over 97.9% of declarants supporting the Settlement, there is little  
7 doubt it is well received. *Id.*

8 Although the deadline for objecting is August 7, 2023, so far Class Counsel  
9 have received 3 objections.<sup>19</sup> All the current objections simply express a desire for  
10 expanded Settlement benefits and/or a possible misunderstanding of the benefits. For  
11 example, Objector Alexander Suprin believes the goodwill payment is insufficient  
12 and instead thinks he should be reimbursed for the engine costs, towing, and interim  
13 transportation. All these items are available under the Settlement, and it appears he  
14 may be confused. Suprin also wants additional compensation beyond what’s offered  
15 under the Settlement because he believes the replacement of the engine with another  
16 engine with a new serial number devalues his car. Likewise, the other two objectors  
17 want a broader Settlement: Objector Christine Pembroke believes her parking costs  
18 should be recoverable; and Objector Scott Sappington believes the warranty  
19 extension should be for a higher mileage. As discussed in section III. A. *supra*, these  
20 objections do nothing challenge the propriety of the class certification here.

21 On balance, the Settlement is well received by the Class, and this reaction  
22 supports final approval.

### 23 **9. The Settlement Is Not the Product of Collusion**

24 Collusion among settling parties can be found explicitly or in “more subtle  
25 signs that class counsel have allowed pursuit of their own self-interests and that of  
26 certain class members to infect the negotiations.” *In re Bluetooth Headset Prods.*

27  
28 <sup>19</sup> Professional objections tend to arrive at or just before the deadline.

1 *Liab. Litig.*, 654 F.3d at 947. Subtle signs of collusion include (1) “when counsel  
2 receive a disproportionate distribution of the settlement,” (2) “when the parties  
3 negotiate a ‘clear sailing’ arrangement providing for the payment of attorneys’ fees  
4 separate and apart from class funds,” and (3) “when the parties arrange for fees not  
5 awarded to revert to defendants rather than be added to the class fund.” *Id.* (internal  
6 citations omitted). A mediator’s involvement in the settlement can also indicate it is  
7 non-collusive. *Wallace v. Countrywide Home Loans, Inc.*, 2015 WL 13284517, at \*7  
8 (C.D. Cal. Apr. 17, 2015) (citing *Satchell v. Fed. Exp. Corp.*, 2007 WL 1114010, at  
9 \*4 (N.D. Cal. Apr. 13, 2007)).

10 Here, the Settlement is not the result of collusion among the parties. First,  
11 Class Counsel filed a contested fee motion seeking \$8.9 million in fees and up to  
12 \$300,000 in actual litigation expenses, which is approximately 11% of the value of  
13 the Extended Warranty benefit alone. *See Bravo v. Gale Triangle, Inc.*, 2017 WL  
14 708766, at \*13 (C.D. Cal. Feb. 16, 2017) (finding Plaintiffs’ requested fees equal to  
15 approximately one-half the net recovery to the Class Members “does not  
16 suggest collusion”); *Contreras v. Armstrong Flooring*, 2021 WL 4352299, at \*8  
17 (C.D. Cal. July 6, 2021) (“the Court is not concerned about collusion based on Class  
18 Counsel’s fee request” equal to 25% of settlement fund). Second, although  
19 Defendants have agreed to pay attorneys’ fees, costs, and service awards separately  
20 from the Settlement benefits, the parties have not agreed on these amounts and  
21 Defendants can oppose Plaintiffs’ fee motion on any basis. Doc. 79-2, SA § V.2. *See*  
22 *Kissel v. Code 42 Software, Inc.*, 2017 WL 10560526, at \*9 (C.D. Cal. Oct. 4, 2017)  
23 (Staton, J.) (finding “clear sailing” agreement alone does not evidence collusion).  
24 Ultimately, the Court will consider and award any fees, costs, and service awards,  
25 and Class Counsel are not guaranteed anything. Moreover, Defendants’ separate  
26 payment of fees and costs protects the Class’s interests by not reducing the Settlement  
27 benefits to the Class. Third, the Settlement does not provide a common fund and so  
28



1 there is no reversion of any unawarded fees to Defendants. Defendants are obligated  
2 to provide all the Settlement benefits regardless of the number of class member  
3 claims. Finally, the Settlement structure was reached in mediation with Hon. Edward  
4 A. Infante, and the parties spent the next six months negotiating the final terms and  
5 Settlement Agreement. Berman Decl. ¶ 9; Schelkopf Decl. ¶ 11; Freeman Cappio  
6 Decl. ¶ 7. *See, e.g., Casey*, 2022 WL 1726080, at \*10 (finding all-day remote  
7 mediation with Judge Infante supported arm’s-length negotiations and lack of  
8 collusion).

9 These factors indicate the Settlement is not the product of collusion and the  
10 Settlement should be approved.

11 **C. Notice Was Given to All Class Members in a Reasonable Manner**

12 Before approving a class settlement, “[t]he court must direct notice in a  
13 reasonable manner to all class members who would be bound by the proposal.” Fed.  
14 R. Civ. P. 23(e)(1). Where the settlement class is certified under Rule 23(b)(3), the  
15 notice must also be the “best notice that is practicable under the circumstances,  
16 including individual notice to all members who can be identified through reasonable  
17 effort.” Fed. R. Civ. P. 23(c)(2)(B); *see Rannis v. Recchia*, 380 F. App’x 646, 650  
18 (9th Cir. 2010) (Rule 23(c)(2)(B) “does not necessarily require that every in-state  
19 class member ‘actually receive[]’ notice.” (quoting *Silber v. Mabon*, 18 F.3d 1449,  
20 1453-54 (9th Cir. 1994)). The notice contents must “generally describe[] the terms  
21 of the settlement in sufficient detail to alert those with adverse viewpoints to  
22 investigate and to come forward and be heard.” *Churchill Vill., L.L.C. v. Gen. Elec.*,  
23 361 F.3d 566, 575 (9th Cir. 2004) (citation omitted).

24 At preliminary approval, the Court found the parties’ proposed notice and  
25 notice plan satisfactory. Doc. 99 at 23-25. As discussed in section II.F *supra*, the  
26 settlement administrators substantially implemented the notice plan by providing  
27 notice via U.S. Mail, email, and dedicated settlement websites in accordance with the  
28

1 Settlement Agreement terms and the Court's preliminary approval order.  
2 Accordingly, all class members have an opportunity to opt-out or object and appear  
3 at the fairness hearing, and the notice plan satisfies Rule 23 and due process.

4 **IV. CONCLUSION**

5 For the foregoing reasons, Plaintiffs respectfully request the Court grant final  
6 approval of the Settlement.

7 DATED: July 7, 2023

Respectfully submitted,

8 /s/ Steve W. Berman

9 Steve W. Berman (*pro hac vice*)  
10 1301 Second Avenue, Suite 2000  
11 HAGENS BERMAN SOBOL SHAPIRO LLP  
12 Seattle, WA 98101  
13 Telephone: (206) 623-7292  
14 Facsimile: (206) 623-0594  
15 steve@hbsslaw.com

16 Matthew D. Schelkopf (*pro hac vice*)  
17 Joseph B. Kenney  
18 SAUDER SCHELKOPF LLC  
19 1109 Lancaster Avenue  
20 Berwyn, PA 19312  
21 Telephone: (610) 200-0581  
22 Facsimile: (610) 421-1326  
23 mds@sauderschelkopf.com  
24 jbk@sauderschelkopf.com

25 *Co-Lead Class Counsel*

1 Gretchen Freeman Cappio (*pro hac vice*)  
2 Ryan McDevitt (*pro hac vice*)  
3 Adele Daniel  
4 KELLER ROHRBACK L.L.P.  
5 1201 Third Avenue, Suite 3200  
6 Seattle, WA 98101  
7 Telephone: (206) 623-1900  
8 Facsimile: (206) 623-3384  
9 gcappio@kellerrohrback.com  
10 rmcdevitt@kellerrohrback.com  
11 adaniel@kellerrohrback.com

12 *Settlement Counsel*

13 Bonner C. Walsh (*pro hac vice*)  
14 WALSH PLLC  
15 1561 Long Haul Road  
16 Grangeville, ID 83530  
17 Telephone: (541) 359-2827  
18 Facsimile: (866) 503-8206  
19 bonner@walshpllc.com

20 Adam Gonnelli (*pro hac vice*)  
21 LAW OFFICE OF ADAM R. GONNELLI, L.L.C.  
22 707 Alexander Road  
23 Bldg. 2, Suite 208  
24 Princeton, NJ, 08540  
25 Telephone: (917) 541-7110  
26 Facsimile: (315) 446-7521  
27 adam@arglawoffice.com

28 Rachel E. Fitzpatrick (*pro hac vice*)  
HAGENS BERMAN SOBOL SHAPIRO LLP  
11 W. Jefferson Street, Suite 1000  
Phoenix, AZ 85003  
Telephone: (602) 840-5900  
Facsimile: (602) 840-3012  
rachelf@hbsslaw.com

*Attorneys for Plaintiffs*